

N.B.M.
" (28.)
November 23. 1780.

UNTO THE RIGHT HONOURABLE,
The Lords of Council and Session,

T H E
PETITION and COMPLAINT

O F

Lieutenant-General HENRY FLETCHER of
Salton,

HUMBLY SHEWETH,

THAT at a meeting of the freeholders of the county of
Dumbarton, held upon the 14th day of September last, for
the purpose of electing a commissioner to represent the
county in parliament, the complainer claimed to be in-
rolled as a freeholder upon the following titles.

1mo, A charter under the great seal, dated 3d of July 1779, in
favour of James Marquis of Graham, of the dukedom, earldom,
lordship, and barony of Lenox, comprehending the particular
lands therein specified; and amongst others the four-pound land
of old extent of Letteruelbeg and Stuckahoich, with the perti-
nents, in the shire of Dumbarton.

2do, A disposition and conveyance of these lands, granted by
the Marquis to General Fletcher in liferent, 6th August 1779.

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3tio,

3tio, An instrument of seisin, bearing, that seisin had been given to the General in virtue of the said charter and disposition; which instrument is dated the 9th, and recorded in the particular register of seisins at Dumbarton the 10th of August 1779.

These lands the complainer set forth in his claim to be a four-pound land of *old extent*; for evidence of which he referred to the retour of the special service of Charles Duke of Lenox and Richmond, as heir of Esme Duke of Lenox and Richmond in the dukedom of Lenox, dated 24th of April 1662.

As no objection whatever lay to the complainer's titles, as the evidence he produced of the old extent was a retour prior to the 16th September 1681, as that retour proved his qualification, and the complainer well knew that many of the freeholders of Dumbarton stood inrolled on no other evidence of their old extent, it was not without a good deal of surprise that he found the following objection made to his inrolment by Mr James Ferrier writer to the signet, a freeholder of the county, and agent for Lord Frederick Campbell, one of the candidates to represent the county in parliament.

" The retour produced for the General affords no evidence of
 " the old extent of the lands on which he claims to be inrolled.
 " For, 1st, It bears, that the old extent of the whole dukedom is
 " L. 517: 3: 4. But it does not show in what manner this *cum-*
 " *lo* extent was made out; for though in the descriptive or first
 " part of the retour, the lands are severally described by pounds
 " and shillings; yet it does not follow that this is their old ex-
 " tent. The retour does not say so; it only says, that the old
 " extent of the whole is L. 517: 3: 4; and the particular sums
 " annexed to the lands in the descriptive clause, when added to-
 " gether, do not correspond to this sum-total. Farther, these
 " sums were taken from the tax-rolls, and are not the old extent.
 " This appears from the tax-rolls; from the retour of Elisabeth
 " Monteith, in 1473; from the retour of Alexander Macaulay of
 " Ardincaple, in 1618; and from comparing the amounts of
 " these pretended extents with the valued rents of the lands,
 " and from other circumstances."

To this objection the most complete and satisfactory answers were made, to be hereafter submitted to your Lordships consideration. A majority of the freeholders, however, several of whom stood themselves inrolled on the evidence of this very re-
 tour,



tour, were pleased to listen to the objection ; and the question being put, it carried, not to inrol the complainer.

Against this judgement of the freeholders the petitioner begs leave to complain to your Lordships, under the authority of the act 16th of the late King, and the 14th of his present Majesty.

To the single objection thus made, it is believed your Lordships will think this answer would have been sufficient *per se*, that this individual retour, which the freeholders were pleased to refuse as evidence of the old extent, had been, by a solemn decision of this court, found to be complete legal evidence of the old extent of the lands which it contains ; and it might have been expected, that a body of country gentlemen, acquainted with this judgement, who, in consequence of it, had on former occasions inrolled freeholders upon the evidence of this retour, and some of whom stood themselves inrolled upon it, might have shown regard enough to a decree of the supreme court, to have admitted the same evidence in behalf of the complainer. As, however, they were pleased to disregard this judgement, and every thing that the complainer could offer in support of it, and to shelter themselves under a variety of arguments, tending to show, from extrinsic evidence, that this judgement was erroneous, it will be necessary for the complainer, not only to state this judgement as a clear precedent in his favour, but also to obviate those cavils (for the complainer cannot call them arguments) that were used against it in support of the objection.

In the entry it will, however, be necessary to give your Lordships a more particular account of this Lenox retour. So large in former times were the possessions of this Noble family, that notwithstanding a division of the estate amongst heirs-portioners above 300 years ago, the retour in question comprehends a very great part of the counties of Dumbarton and Stirling, erected into the dukedom, earldom, lordship, and barony of Lenox ; the different lands composing which are specially enumerated in the first part of the retour, and to each the usual description of the old extent by pounds, merks, and shillings, is annexed, thus : *Quinquaginta tres solidat. et quatuor denariat. terrarum de Blairbynachra, quinquaginta tres solidat. et quatuor denariat. terrarum de Balimanoch*, and so on. And then in the *Valent* clause of the retour, the whole dukedom is retoured thus : "*Quod totus et integer dictus ducatus, comitatus, dominium, baronia, et regalitas de Lenox,*
" *cum*

“ cum libera capella et cancellaria, ac etiam omnibus immunitatibus, pri-
 “ vilegiis ac libertatibus liberæ regalitatis specialiter in se comprehen-
 “ den. terras, domina, baronias, officia, et alia particulariter et gene-
 “ raliter supra mentionat. tam proprietatem, tenendriam, quam supe-
 “ rioritatem earund. cum omnibus et singulis suis pertinen. valet nunc
 “ per annum summam L. 1551, 10s. monetæ hujus regni; et quod tem-
 “ pore pacis valuit summam L. 517:3:4 monetæ prædictæ.”

The retour further comprehends part of the barony of Kilma-ronock, the particulars of which are also enumerated, and the old extent annexed to each particular, excepting only the mill of Mewie, with the mill-lands and astricted multures, to which no extent is annexed; and in the *Valent* clause the whole of this part, including the mill and mill-lands, is retoured to be worth L. 13:3:4 Scots; which sum agrees precisely with the sums enumerated in the descriptive part.

Your Lordships have been informed, that in the Lenox retour the old extent in the *Valent* clause exceeds the particular sums in the descriptive clause in the trifle of L. 1:16:8: Had this not been the case, but had they coincided exactly, it is believed it never would have entered into the head of the most anxious politician to deny, that the sums annexed to the lands in the descriptive clause were their respective *old extent*. It appears, however, that this trifling discrepancy had, soon after the passing of the 16th act of the late King, which confined the evidence of the old extent to retours prior to 1681, been laid hold of by certain freeholders of this county, who wished if possible to destroy the political influence of such families as possessed the superiorities of the lands contained in this retour; for complaints were, within the time allowed by the act, presented to this court by James Colquhoun of Luss, against a number of the freeholders of the county, who stood on the roll on evidence of their old extent arising from this retour, to which the same specific objections were offered, that were stated to the freeholders in the present case by Mr Ferrier. These objections were supported before the court by one of the most eminent counsel then at the bar, (now on the bench), who strongly insisted, that the descriptive clause was no evidence of the old extent, not only because the *Valent* clause was alone to be regarded for verification of what was the extent of the lands; and because in that descriptive clause the old extent is not mentioned; but also because the discrepancy between the sum of the particular lands and the

the old extent, as proved by the *Valent* clause, showed the retour to be erroneous ; which, where-ever the error lay, must discredit the whole. — These objections, however, which are exactly the same with those now made, and which were as well supported by argument as it is possible for the present objections to be, had no weight with the court. They viewed the trifling discrepancy as an *error calculi*, and the descriptive clause as full evidence of the old extent of the lands it contains, and pronounced a judgement to this effect ; which from that time to this has been quoted and followed as a precedent ; and lands in the two counties of Dumbarton and Stirling have been repeatedly bought and sold on the faith that this retour afforded complete legal evidence of their old extent.

That this judgement is in every respect well founded, will not admit of the shadow of a doubt. For, in the *first* place, it is perfectly well known, that in all retours, the lands, when described by pounds, shillings, and pence, are described, not by the *new*, but by the *old* extent : Independent therefore of the near coincidence of the sum of the lands described in the descriptive clause, with the sum of the old extent, as fixed by the *Valent* clause, the description of the lands in question as a four-pound land, is sufficient evidence that four pound was their old extent. Neither can it be disputed, that the old extent may be proved by *any* clause in a retour, by the *descriptive*, as well as the *Valent* : for as prior to the act 16th of George II. every species of evidence was received to prove the old extent ; and as that act, though it confines the proof of the old extent in time coming to a retour prior to 1681, does not circumscribe that proof to the *Valent clause* ; your Lordships must therefore receive such retours as evidence thereof, whether they prove it by one clause or another. But,

2do, It is clear as the sun, that though the descriptive clause does not use the word *old extent* ; yet the sums by which the lands are there described cannot possibly be any thing else but their old extent. It surely will not be disputed, that if the sum of the whole lands in the descriptive clause had agreed *precisely* with the old extent of the whole lands as fixed by the *Valent* clause, the sums in the descriptive clause would have proved the old extent : for had they related to any other extent, it is utterly impossible that the coincidence could have happened, as the sum of those valuations must have exceeded or fallen short of the sum of the old extent

in the *Valent* clause. If therefore the trifling discrepancy that occurs can be rationally accounted for; or if it shall appear, that the discrepancy must have been much greater, if any other extent than the old extent had been referred to in the *Valent* clause, it will be perfectly clear, that the old extent alone could be meant; and the retour will be in the same situation as if no such discrepancy had occurred.

This trifling discrepancy, then, has, in all probability, arisen from an *error calculi*, which might very naturally happen in summing up so many particulars, consisting of pounds, shillings, and pence, the articles being no fewer than seventy-two; or it may be thus accounted for, that in the descriptive part there appears the small islands of Inchmirran, Inchvannoch, and Crainch, in Lochlomonnd, with the fishings in the loch; and from the style of the retour, it is not very certain, whether the extent of the immediately preceding article, viz. the five-pound land of Balloch includes these subjects, or not. If it does not, the discrepancy of L. 1 : 16 : 8 may be the extent of those isles and fishings; which not being specially mentioned in the descriptive clause, necessarily creates that difference between it and the *Valent*.

But let the discrepancy arise from what it may, it is perfectly clear, that it is by much too small to make it possible that the lands are described by any other extent than the old extent; for the objector will be puzzled to show what extent or valuation it can be, that in the large sum of L. 517 : 3 : 4 should differ but L. 1 : 16 : 8 from the old extent; and, at any rate, it will be observed, that the objection at best resolves into this, that each of the particulars, or one or more of them, are of *greater* extent than what has been laid upon them in the descriptive clause, which is surely of no consequence whatever; their being of *less* extent might have been.

It is here proper to observe, that although no attempt was made to discredit the evidence of the retour, so far as concerns the barony of Kilmaronock, on which Lord Stonefield and Mr Macmillan, who voted in the same interest with the present objector, stand inrolled; yet though no discrepancy betwixt the *descriptive* and *Valent* clause appears in that part of the retour, an objection stronger (or, to speak more properly, not altogether so weak as the one in question) lies against it. In the barony of Kilmaronock, there appears in the *descriptive* part, the mill of Mewie,

Mewie, and the mill-lands, without any extent annexed to them; yet in the *Valent* clause the whole lands, with the mill and mill-lands, are said to extend to L. 13 : 3 : 4. This circumstance founds an objection the reverse of the present; for if any part of this L. 13 : 3 : 4 is supposed to belong to the mill and mill-lands, the particulars in the descriptive part are of course too high. This objection, however, when moved in Sir James Colquhoun's complaint above mentioned, shared the same fate with the one now revived by Mr Ferrier.

The complainer apprehends both branches of the judgement rest on the same solid foundation, that the law requires no other evidence of the old extent than a retour prior to 1681; that this retour is prior to that date; and although it describes the complainer's lands as a four-pound land, without mentioning *old extent*; yet nothing but the old extent could possibly be meant; such descriptions, by pounds and merks, being in practice confined to the old extent; while, from the very trifling discrepancy between the sum of the particular lands in the descriptive clause, and the amount of the old extent in the *Valent* clause, no other extent could have been meant: and the court would no doubt have in view, in pronouncing that judgement, that if the old extent was indeed meant, it was not competent for them to enter into the question, whether the verdict of the jury was erroneous, or not; as that would have been insisting on stricter evidence than the act of parliament requires.

Did this solemn decision of the supreme court require support from any arguments the complainer can offer, he would farther observe, that this retour corresponds as to the extent of all the particular lands it contains, with two prior retours of this estate in 1625 and 1655, which were also produced to the freeholders; but there is a piece of evidence to show, that this four-pound land, and the other lands mentioned in the descriptive clause of the Lenox retour, are described by their *old extent*, which is altogether decisive and irrefragable. It is this, that several of the particular lands in the Lenox retour are also to be found retoured to the same extent in other retours of particular parts of the earldom, expedite at different periods by the vassals in those lands. Thus, in the Lenox retour, the lands of Ardardans, Noble, and Lyle, are described as an eight-pound land; and the same lands are, in a retour appearing in chancery of Humphry Noble of Ardardan,

Ardardan, as heir of his father William, dated 26th March 1608, retoured separately to L. 4 each of old extent; and, on the evidence of this retour, Mr Donald of Lyleston, and Captain Noble, two of Lord Frederick Campbell's voters, stand inrolled. Here then is evidence, that Ardardan, Noble, and Lyle, are in fact an eight-pound land of *old extent*; so that it follows, that, by the description in the Lenox retour of those lands as an eight-pound land, an eight-pound land of *old extent* was meant; nay, Lord Frederick Campbell himself, in the claim on which he was inrolled, refers to the Lenox retour, as evidence, that his lands of Ardincaple are a twelve-merk land of old extent; and quotes Macaulay of Ardincaple's retour, as coinciding with the Lenox retour in this respect.

In the same manner, the Lenox retour contains the ten-pound land of Craigrostan; and the same lands are retoured to be L. 10 of old extent in the retour of Sir James Colquhoun of Lufs, as heir to his father, dated the 11th of August 1676.

A variety of other instances might be given; in which *other* retours afford evidence, that sundry different lands in the Lenox retour have their old extent precisely the same with the extent by which they are therein described. From this coincidence between these retours and the Lenox retour, the complainer, with confidence contends, That *all* the lands in the Lenox retour must be held as described by their *old extent*: for is it possible for a moment to imagine, that Ardardan, Noble, and Lyle, Craigrostan, &c. could be described by the *old extent*; and that the very same expression by which they are so described, when applied to the other lands, was intended to mean the *new* extent, or any other extent or valuation whatever?

So much the complainer has been led, though perhaps unnecessarily, to state, in support of the decision of this court in 1746, which found this very retour to be complete legal evidence of the old extent of the lands which it contained; and he shall now proceed, as shortly as possible, to consider those *new* grounds upon which it is now impugned.

First, then, it is contended, That the sums in the retour were taken from the tax-rolls; and that therefore they are not the *old*, but some *new* extent.

To this, and all the other extrinsic evidence resorted to by the objector, it might be sufficient in general to answer, that all
such

such evidence is utterly incompetent. The law admits of no proof of the old extent, but a retour prior to 1681. The complainer would not have been intitled to resort to tax-rolls, or any extrinsic evidence whatever, to *prove* his old extent, independent of such retour, nor even to support such retour. It is not therefore easy to perceive how such evidence can be admitted to disprove it. The question is not, Whether this retour is *right* with regard to the old extent of these lands? but whether their old extent is thereby proved? and as the retour proves the old extent, the freeholders ought to have held it as sufficient evidence.

There is, however, not the shadow of reason for the plea, that the extent taken from the tax-roll cannot be the old extent; for as in fact the taxes were originally in use to be levied by the old extent, while the new extent served only as a rule for ascertaining the casualties of superiority, this retour's agreeing with the tax-roll, is additional evidence that the extent therein mentioned is the old extent.

The complainer does not propose to trouble your Lordships with much argument to prove a proposition so universally well understood, as that prior to the general valuation in 1667, (since which period the valued rent has been the rule for levying the taxes), the old extent was used for that purpose. He shall satisfy himself with quoting a few authorities; and, first, the opinion of Skene, who says, "This distinction of the old and new extent Skene, de verb. Sig. voce Extent. is necessary; for *taxations* of lands are raised conform to the *ould extent*, and relief of lands in the retoured mail, according to the new extent."

In like manner our later writers all agree, that it was not till the Usurpation that the old extent was laid aside in levying the public taxes as unequal; that the first land-tax after the Restoration was again levied by the rule of the *old extent*; and that the tax imposed *anno* 1667, by the act of convention, was levied by the new valuation, since which time all taxes are levied according to the valued rent.

The sense of the legislature on this head is also evident from the tenor of the acts from time to time imposing the land-tax. Thus, the act 1597, grants to the King a tax, at the rate of 40 s. for every pound-land of *old extent*; and the same act appoints the King's property-lands to be retoured to the same avail with other contiguous lands held of the King, and that they should pay 40 s. for

for every pound-land, being at the same rate with other freeholders; and the act 1594, cap. 229. appoints all feu-lands annexed to the crown, or other feu-lands whatever, to be retoured to merk or penny lands; *according to which retour* any taxations should be raised. - Accordingly it is well known to your Lordships, that crown-lands and kirk-lands in Scotland were thus retoured; and their retours have been sustained as sufficient evidence of the *old extent*, to intitle the proprietor to vote, although it is clear that their old extent was that by which they stood taxed.

Farther, your Lordships will remember, that in the case of the abbacy of Culrofs, it was held as an admitted point, that the *old extent* was the only rule for levying the *land-tax*, and which formerly qualified a man to sit in parliament; and that it was attempted unsuccessfully in that case to set aside a retour of church-lands as evidence of the old extent, on this ground, that their new valuation was not equivalent to the proper old extent, particularly *because the taxes had not been levied thereby*. Your Lordships, however, sustained the retour, which shows plainly the sense of this court, that the old extent was the uniform rule for payment of taxes.

The very same doctrine was successfully pleaded in a question between Mr Campbell of Succoth and the freeholders of Renfrewshire. And in another case between Lord Drummore and the freeholders of Haddingtonshire, it was assumed as an incontrovertible proposition, That the tax-rolls of the several shires were the best evidence of the old extent, that extent being the uniform rule by which the taxes were levied.

The complainer might mention many other authorities; but he apprehends the above are sufficient to overthrow the whole of the objector's argument on this head; and particularly to show, that the description of the lands in this retour being taken from the tax-rolls, supports, instead of weakening, the evidence of the retour: for if the complainer's lands pay the taxes as a four-pound land, L. 4 must have been their old extent; because by the old extent alone the land-tax was paid.

The complainer shall only farther observe on this head, that had the objector given himself the trouble of considering, but a moment, the principle on which a forty-shilling land of old extent was made a qualification for voting for a member of parliament, he could never have thought of setting up the present
plea:

plea: for the only ground on which that qualification rested was, that it was reasonable that those who bore a certain share of the public taxes, should have a certain share of the government. The present retour would have subjected the complainer to pay the land-tax in proportion to a four-pound land of old extent, while that extent was the rule for levying the land-tax: And it is upon that very principle, that the legislature have preserved to him the right of voting for a representative, although the taxes are now levied by a different rule. Had the land-tax been ever levied by the new extent, it is pretty clear, that that, and not the old extent, would, at this day, have given a right of voting.

The next piece of extrinsic evidence founded on by the objectors, is Elifabeth Monteith's retour in 1473. In order to your Lordships rightly understanding this part of the argument, it is necessary to inform you of the following particulars. Duncan Earl of Lenox had three daughters, and no sons. The eldest daughter Isabel, the wife of Murdoch Duke of Albany, died without issue.

Elifabeth, the second daughter, was married to Sir John Stewart of Darnly; and left issue Sir Allan Stewart of Darnly, who was father of John Lord Darnly, who served himself one of the heirs-portioners of his grandfather Duncan Earl of Lenox, in 1463, and was afterwards created Earl of Lenox in 1483, his share of the old estate of the earldom having been erected into a new earldom in his favour.

Margaret, the third daughter of Earl Duncan, was married to Robert Monteith of Rusk, and left issue two daughters, Agnes, married to Sir John Haldane of Gleneagles, and Elifabeth, married to John Napier of Merchiston.

In 1473, John Haldane, son of Agnes, and the said Elifabeth in her own right, were served heirs of Duncan Earl of Lenox, each in one fourth "*totius comitatus de Levenax*."

The half which belonged to Lord Darnly, and which composed the new earldom, was afterwards erected into a dukedom, to which, on the death of the last Duke, King Charles II. succeeded as heir-male. By him it was bestowed on the Duke of Richmond, his natural son; from whose family it came, by purchase, into that of Montrose; and it is the retour of this dukedom on which the complainer founds, as evidence of his old extent.

Your

Your Lordships have been told, that Elisabeth Monteith was served heir in a fourth of the old earldom. Her retour in 1473 bears, "*Quod dictæ terre quartæ partis valent nunc per annum, cum pertinentiis, centum et viginti quinque libras, et tantum valuerunt tempore pacis.*"

On this retour the objector founds this argument, That as this *fourth* of the earldom is retoured at only L. 125 old extent, the old extent of the new earldom, which was one half of the old, could only be L. 250, instead of which it amounts to double that sum, and must of consequence be something different from the old extent. — But to this plea a variety of satisfactory answers occur: For,

1mo, Your Lordships will not be inclined to put this retour in competition with the Lenox retours in point of accuracy; the latter being expedite at Edinburgh, before the most respectable jury that could be had in the kingdom, the Lord President of the court of session being one of the number; and it cannot be doubted, that the very best assistance was procured in expediting them; whereas the former was expedite at Dumbarton, before a country-jury, from whom, and the persons who conducted the service, the same judgement and accuracy could not be expected. And accordingly the retour labours under this material defect, that the old extent and the new extent are the same: which is sufficient to set it aside; for we are told by Skene, that where the new extent had not formerly been retoured, it was usual to fix it at the *quadruple* of the old extent. And Balfour quotes two decisions, 5th February 1499, James Dunbar of Cumnock *contra* John Lord Cathcart, and 10th March 1504, Earl of Lenox *contra* Shire of Ayr, where retours were found to be null and void, merely because the old extent and the new were retoured at the same amount.

2do, It will be observed, that supposing the old extent of Elisabeth Monteith's fourth of the earldom to have been properly retoured in 1473, it by no means follows, that the old extent of two fourths, which constituted the new earldom, should have had double the old extent in the year 1625, near one hundred and fifty years after: for it cannot be supposed, that the earldom did not undergo considerable augmentations and diminutions between these respective periods. Indeed there is evidence that

that this was the case : for, besides other lands, the lands of Dal-lingonachan and Ballagan are retoured as part of the earldom in 1622, although they could not be comprehended in the retour 1473, being then kirk-lands.

It is also well known, that the three heirs-portioners of Lenox had various transactions amongst themselves regarding the division of the succession, which would naturally make a difference on the extent of that half of the earldom which fell to the Darnly family, *pro indiviso*, in 1473, and that divided half of the earldom which belonged to them in the 1662.

3thio, The whole of this calculation proceeds on two most material errors in point of fact ; for besides that there is no such proportion between the real rents of lands and their old extent, as to make it necessary that the old extent of the different fourths of the earldom should be the same, Elifabeth Monteith's retour does not contain the *whole of her fourth* of the old earldom, but that part of it only which lay in the county of Dumbarton ; for the service proceeded before the sheriff of Dumbarton, and the verdict is confined to the lands and annualrents *totius comitatus et dominii de Lenox*, JACEN. IN COMITATU DE DUMBAR-TOUNE ; whereas the Lenox retour in question contains the *whole* dukedom, that is, one half of the old earldom, with all the additions thereto between 1473 and its date, whether lying in Dumbartonshire or Stirlingshire, and also the lordship of Methven in Perthshire ; and what at once overthrows the whole of the objector's argument is, that when the whole lands in the Lenox retour, which lie in Dumbartonshire, are taken by themselves, their old extent amounts but to a trifle more than double the old extent of those in Elifabeth Monteith's retour.

To save this favourite hypothesis from so fatal a blow, it was alledged, that in 1473 Dumbarton comprehended the whole earldom of Lenox, and that Elifabeth's fourth of the earldom was afterwards annexed to Stirlingshire. This, however, is altogether a mistake ; for, at that time, great part of the earldom lay in Stirlingshire, and could not be comprehended under the verdict of an inquest taken before the sheriff of Dumbarton. And, indeed, part of it, which then lay in Stirlingshire, has been since annexed to Dumbartonshire.

That this was the case, is proved by a charter by Eugene Mac-kefak to Donald Lenox of the lands of Kilmardinny, dated 4th

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July 1442; where those lands, though now lying in Dumbartonshire, are said to lie in the lordship of Lenox, and *Sheriffdom of Stirling*.

The lands of Letter, part of the earldom of Lenox, are also proved to have lain in Stirlingshire, by a procuratory of resignation by William Stirling of Cadder, on the 7th of January 1492, in favour of his eldest son.

Many other evidences of the same nature could be adduced; but the fact is decisively proved by the following document, viz. a writ under the privy seal by James III. dated the last day of July 1473, the very year of Elisabeth Monteith's retour, in which his Majesty declares, That "Johne Lord Dernle has componit
" with us for the hale entre in the erldom of Levenax, with the
" pertinents, liand within our *Sheriffdoms of Striveling and Dunbartane*;" and therefore discharges him of the same.

The third piece of extrinsic evidence founded on by the objector, is the retour of Macaulay of Ardincaple in 1618, which makes the old extent of some few of the lands in the Lenox retour less than the sums they are therein described by.

The complainer has already observed, that the accuracy of Elisabeth Monteith's retour ought not to be put in competition with that of Lenox. The same observation will apply with double force to that of Ardincaple. And it is, with all submission, not a little absurd to set up the retour of the trifling property of Ardincaple, exped in Dumbartonshire, against three consecutive retours of the great dukedom of Lenox, exped at Edinburgh, no doubt with all that accuracy that so great an object required. At any rate, this very retour supports that of Lenox, though it differs from it in some particulars, for the extent of Ardincaple is the same by *both* retours; and the complainer once more repeats it, that if *one* article of the descriptive part of the Lenox retour is described by the old extent, *every other* must be described by it also; for the descriptive words of it are the same in all, and their sum corresponds with the old extent of the *whole* in the *Valent* clause, your Lordships having already found that the trifling discrepancy of L. 1 : 16 : 8 is not to be considered as of any consequence.

It is only necessary to observe farther on this head, that the lands of Ardincaple being held of a subject superior, this retour is certainly not the best evidence of the old extent; and as some
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of the lands contained in it were holden feu by the Macaulays of the family of Lenox, the feu-duties were naturally substituted in place of the extent.

The next piece of evidence the objector draws from the valued rent, which, he says, is, in some of the lands of the Lenox retour, only about forty times higher than the old extent; whereas in other lands in Dumbarton and Stirling shire the valued rent is at least one hundred times the old extent. This, however, is another argument raised upon an averment contrary to fact; and it is not a little extraordinary, that the objector, though doer for the family of Argyle, should have been ignorant that the very thing he objects to the Lenox retour occurs in the lordship of Roseneath, which belongs to the Duke of Argyle, and lies intermixed with the dukedom of Lenox: nay, that the old extent and valued rent of the former come nearer each other than those of the latter.

Of this a few instances shall suffice. The lands of Cursnoch are retoured to L. 2, 10s. of old extent, though their valued rent is only L. 79 : 10 : 10; Blairnachrane to L. 2 of old extent, though its valued rent is only L. 54 : 14 : 2; Douchlass to L. 3 : 6 : 8 of old extent, its valued rent only L. 63 : 5 : 3; Knockdorie Mackenzie to L. 2 old extent, its valued rent L. 89 : 9 : 8: and yet on all these extents gentlemen were inrolled who voted with Lord Frederick Campbell.

In the barony of Kilmaronock also, Mr Duncan Macmillan was inrolled for Blairquhanran, retoured to L. 2 of old extent, the valued rent L. 66 : 13 : 4; Lord Stonefield inrolled for Merkins, retoured to L. 2 : 13 : 4 old extent; his son for Blairquhomrie, retoured to L. 3 of old extent; and of both these subjects the valued rent is only L. 136. In the same way Mr Telfer was, at last Michaelmas head-court, inrolled for Caldervane, its extent L. 2, its valued rent only L. 36.

Thus then, it is shown, that in various other instances, the old extent comes nearer to the valued rent than any instance that can be given from the Lenox retour. Such evidence, however, was not necessary to obviate the objection; for it is well known, that there is not, in any part of Scotland, any thing like a regular proportion between the old extent and the valued rent. Indeed it is impossible there should: for the only reason for a new valuation

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in the last century was, that the *old* extent did not bear a regular proportion to the real rents of the lands, and consequently they could bear no such proportion to the valued rents when fixed, which were neither more nor less than the real rents at the time.

The complainer has thus stated to your Lordships what occurs to him, in answer to those arguments with which the objector has endeavoured to combat the evidence of the old extent, arising from the *Lenox retour*; and he entertains no doubt that your Lordships will be of opinion, that the judgement of this court in 1746 was well founded; that the objector's new evidence and arguments, so far from impinging upon it, give it additional support; and that you will therefore find, That the freeholders did wrong in refusing to inrol the complainer, and will order him to be added to the roll accordingly.

May it therefore please your Lordships, to grant warrant for serving this complaint upon the said Mr James Ferrier; and to ordain him to put in answers thereto within fifteen days after such service; and, upon the merits of the complaint, to find, That the meeting of freeholders did wrong in refusing to admit the petitioner upon the roll; and therefore to order him to be added to the roll; and to give the necessary directions for carrying that order into execution.

According to justice, &c.

HENRY ERSKINE.



